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| SERIAL NUMBER | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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08/354,177 12/12/94 CHILDRESS

13M1/0415

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| B 41933 |
| EXAMINER |
| TRAN LIEN, T |

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| ART UNIT | PAPER NUMBER |
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1302

DATE MAILED:

04/15/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 1-26/96 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-29 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-29 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

1. The 112 second paragraph rejection of claims 2,5-6,9-10,18 and 25 is hereby withdrawn.
2. The 103 rejection of claims 1-29 over the Dudenhoeffer et al. reference is hereby withdrawn.
3. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

4. Claims 1-29 are rejected under 35 U.S.C. § 103 as being unpatentable over Ferguson (4770731) in view of Ferguson (5234731).

Ferguson discloses a patch to be used with a heat shrinkable bag. The patch is heat shrinkable with the bag to reduce the tendency of delaminating. The patch comprises of two outer layers and two inner layers. The outer layers comprise of 87% by weight of linear low density polyethylene, ethylene-vinyl acetate, pigments and additives and the inner layers comprise ethylene-vinyl acetate copolymer. The linear low density polyethylene has a density of .900 to .935 grams per cubic centimeter. (See col. 3 lines 16-30)

Ferguson does not disclose the linear low density polyethylene is a long chain branched homogenous ethylene alpha olefin copolymer. Ferguson also does not disclose the bag is made of long chain branched homogenous ethylene alpha olefin copolymer.

Ferguson (5234731) discloses a heat-shrinkable bag that is made of copolymer of ethylene and alpha-olefin.

It would have been obvious for one skilled in the art at the time of the invention to use the Ferguson patch in combination with the Ferguson bag because the reference discloses the bag has excellent abuse resistance properties. As to the polymer being long chain branched homogenous copolymer, this limitation is not deemed patentably significant because both the process of making homogenous ethylene alpha olefin copolymer and the product are known in the art as admitted by applicant in the specification. Since the process is known and the product is commercially available, it would have been obvious for one skilled in the art to select the material which would give the most optimum properties to the product being made. The use of homogenous ethylene alpha olefin in the claimed invention is not the point of novelty in the instant application. Both of the Ferguson references teach the use of copolymer of ethylene and alpha olefin; they do not restrict the polymer to homogenous or heterogenous. Therefore, it would have been obvious to use the one which is best suited for the product being made. The use of an adhesive to adhere the patch to the bag as claimed in claim 2 is conventional and would have been obvious to one skilled in the art. The amount of shrink claimed in claims 8-10 is seen as nothing more than optimization which is well within the skill of one in the art. It would have been obvious to have the patch shrinking at

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a rate which is compatible with the bag to obtain the most optimum result. As to the limitation of putting additional patches as claimed in claim 26, it would have been obvious for one to do so if it is desired to increase the strength of patched area of the bag.

5. Applicant's arguments with respect to claims 1-29 have been considered but are deemed to be moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703)308-1868. The examiner can normally be reached on Monday-Thursday from 8:30-6:00. The examiner can also be reached on alternate Friday from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Esther Kepplinger, can be reached on (703)308-2339. The fax phone number for this Group is (703)305-3602.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0648.

08 April 1996



Lien Tran
Group 1300
Patent Examiner